IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

W.A.No.3661 of 2002

1. K.T.Venkatesan
2. K.T.Srinivasa Raja .. Appellants

versus

1. The Appropriate Authority
   (Income-tax Department)
   First Floor
   108, Mahathma Gandhi Road
   Chennai-600 034.

2. Union of India
   rep. by its Secretary
   Ministry of Finance
   New Delhi.

3. C.R.Venkatachalam

4. Vandana Venkatachalam ..
Respondents

4th respondent impleaded as per order dated 13.3.2007 made in W.A.M.P.No.1963 of 2003.

PRAYER: Writ Appeal filed under clause 15 of the Letters Patent against the order of this Court dated 31.10.2002 made in W.P.No.9956 of 1999 to issue a writ of certiorari or any other appropriate writ, order of direction in the nature of a writ, calling for the records from the 1st Respondent culminating in its order A/A/MDS/No.2 (243) 5/98-99 Dt.28.5.99 accompanied with the letter A/A/MDS/No.2 (243) 5/98-99 Dt.28.5.99 and quash the same.

For appellants : Mr.A.K.Lakshmi Narayanan

For respondents-1 & 2 : Mr.Naresh Kumar
Junior Standing Counsel for
Income Tax

For 3rd respondent : No appearance

For 4th respondent : Mrs.Chitra Sampath

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

JUDGMENT

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.)

This writ appeal is against the order of the learned single Judge dated 31.10.2002, dismissing the writ petition preferred against the order of the appropriate authority the first respondent herein. The writ appellants herein are the transferees who had entered into an agreement to purchase the property. By order dated 23.5.1999, the first respondent herein, in exercise of its powers of preemptive purchase, under Section 269-UD(1) of the Income Tax Act, ordered purchase of a property for a consideration of Rs.27,60,670/-.

2. It is seen that the transferor C.R.Venkatachalam, petitioner in W.P.No. 9793 of 1999, was the owner of the premises at No.3, Krishnamachari Avenue, Adyar, Chennai. The transferees are the writ petitioners in W.P.No.9956 of 1999. The transferor and transferees entered into an agreement to sell and purchase the property for an apparent consideration of Rs.28 lakhs on 10.2.1999. The parties filed their statement in Form 37-I in respect of the agreement dated 10.2.1999. A show cause notice under Section 269-UD(1A) dated 23.4.1999 was issued along with the valuation report citing two comparable sale instances calling upon them to show cause as to why the property should not be purchased by the Department under Section 269-UD of the Income Tax Act. After the receipt of objections, the first respondent passed an order under Section 269-UD (1) on 28.5.1999 exercising its pre-emptive right to purchase the property for a consideration of Rs.27,60,670/-. The appropriate authority, the first respondent herein, concluded that the value of the subject matter of the property was 38.6% lower compared to the land rate as per the sale instances.

3. Challenging the said order, writ petitions were filed before this Court contending that the property was a tenanted property; the property had no commercial value and that there was no under-valuation of the property. It was also contended that the properties, which were taken as comparative sales, were subject of the proceedings under chapter XX-C and that the same should not have been taken into consideration.

4. The claim of the writ petitioners was countered by the respondent that the appropriate Authority had exercised its powers after due deliberation and that there was no ground for interfering with the reasoning of the appropriate authority. Considering the scope of Article 226 of the Constitution of India, the remedial judicial review could not be equated to a remedy of appeal. The respondents placed reliance on the decisions reported in 208 ITR 637 (DEVESH BEHARI SAXENA Vs. DEPUTY COMMISSIONER OF INCOME TAX AND ANOTHER, 235 ITR 118 (APPROPRIATE AUTHORITY AND ANOTHER Vs. SMT.SUDHA PATIL AND ANOTHER, 247 ITR 182 (RAMESH BHAI J.PATEL Vs. UNION OF INDIA) and 251 ITR 93 (UNION OF INDIA Vs. SHATABADI TRADING AND INVESTMENT P. LTD. AND OTHERS).

https://hcservices.ecourts.gov.in/hcservices/

5. In the course of the proceedings before this Court, the wife and the daughter of the transferor impleaded themselves seeking a

direction to deposit the money due to them in respect of the decree passed at the instance of the wife and daughter against the transferor.

6. This Court referring to the decision of the Supreme Court reported in (2001) 6 SCC 563 (APPROPRIATE AUTHORITY AND ANOTHER Vs. KAILASH SUNEJA), followed in (2001) 4 SCC 710 (APPROPRIATE AUTHORITY Vs. R.C.CHAWLA), (2001) 6 SCC 748 (UNION OF INDIA AND OTHERS Vs. SHATABADI TRADING & INVESTMENT (P) LTD. and (1998) 8 SCC 237 (APPROPRIATE AUTHORITY Vs. SUDHA PATIL) took the view that in the light of the guidelines given by the Apex Court, this Court's jurisdiction to examine the contentions is very limited in that the jurisdiction is not that of an appellate forum. Learned single judge also pointed out that admittedly there was no complaint of procedural violation or violation of principles of natural justice while passing the impugned proceedings. On the question of comparable instances, the learned Single Judge also found the reasoning as correct and was not disputed. It was also seen that the subject property and the comparable sale instances were similar and could not be questioned as incomparables. Hence, the learned Judge held that the contention did not deserve any further consideration. As regards the downward trend in the real estate market, the learned single Judge pointed out that the competent authority had taken note of the fall in the real estate market. Referring to the compelling circumstances which necessitated the sale of the property, this Court found that the suit was of the year 1997. The decree was of the year 1998 and the agreement was entered in 1999. Learned Judge pointed out that the wife and the daughter were not paid as per the decree, but then the contention that it was a distress sale could not be accepted and rightly so, the respondent had taken the view that the sale was not a distress sale. Learned Judge also rejected the plea that there was a tenancy in the premises.

7. On the question of jurisdiction raised by the transferee, learned single Judge held that the same could not be sustained that merely because the agreement stipulated a lesser time, it could not be said that Chapter XX-C could not be invoked when the transactions attracted Chapter XX-C. In the circumstances, taking the view that there were relevant materials before the competent authority to order the preemptive purchase, the writ petitions were dismissed. As regards the claim made by the wife and the daughter of the transferor, ordering the impleading petitions, this Court ordered in the direction petitions that the appropriate authority would pay a sum of Rs.17 lakhs with proportionate interest on the said sum earned by virtue of the deposit till the date of the order of this Court.

8. The writ appeal is preferred by the transferees. There is no appeal from the transferor. The grievance of the writ appellants is that Section 269-UC, as it then stood, required that the agreement would be not less than three months before the intended transfer, but the agreement entered into between the appellants and the transferor provided only fourteen weeks. Hence, when the agreement was not in accordance with Section 269-UC(1), the first respondent had no jurisdiction to act on the circumstances, and the order in the writ petition amounts to conferring legality on an agreement that

WEB COPY
https://ncservices.ecourts.gov.in/ncservices/

contravene Section 269-UC(1). The appellants also questioned that the first respondent had not furnished the documents relied upon. In the circumstances, he prayed for setting aside the order of the learned single Judge and thereby, the order of the appropriate authority. Although the appellants had raised other grounds in the writ appeal, except for the contention on the jurisdiction as stated above, the appellant has not raised any other objection in the course of arguments before this Court.

9. The contentions of the appellants were countered by the learned standing counsel, contending that the transferee, as such, has no locus standi to maintain the writ appeal when the vendor had not preferred any appeal challenging the order of the learned single Judge upholding the order of the appropriate authority. Quite apart, he referred to the jurisdiction of this Court under Article 226 of the Constitution of India and submitted that the learned single Judge, on a consideration of the entire case, had rightly come to the conclusion on every aspect of the matter now projected and consequently prayed that the appeal be dismissed.

10. We agree with the submission made by the respondents. A perusal of Section 269-UC(1), no doubt, states that no transfer of any immovable property shall be effected after an agreement for transfer is entered into between the transferor and the proposed transferee in accordance with the provisions of sub section (2) at least three months before the intended date of transfer. Conscious of the provisions under Section 269-UC, yet, the parties herein had entered into an agreement of sale on 10.2.1999 fixing a shorter time limit of fourteen weeks for the validity of the agreement and that the time might be extended further by mutual consent. Accordingly the parties had filed Form 37-I in accordance with the provisions of the Act. A perusal of the provisions as stated above shows that the emphasis in the Section is to the time factor prescribed for filing Form 37-I. The date of entering into the agreement must have proximity of time with the proposed transfer of property as defined in Clause (f) of Section 269-UA. It is clear, hence, that whatever be the private agreement entered into between the parties, it is a proforma agreement signed by the parties which must be filed before the appropriate authority within fifteen days of signing thereof. The limitation has to be with reference to the date of signing of the agreement and not with reference to the intended period in the agreement. Consequently, we do not find any ground to accept the plea of the appellant herein that the competent authority had no jurisdiction in this matter. Quite apart from this, as rightly contended by the learned counsel appearing for the respondents, if at all there could be any grievance, it could be only from the vendor who had not raised a dispute. In the circumstances, we do not find any justification in the contention of the appellant transferee.

11. Considering the parameters of the jurisdiction under Article 226 of the Constitution of India, and there being no irrationality in the view of the appropriate authority, as rightly found by the learned single Judge, we do not find any justification to accept the submissions of the appellants herein. In the circumstances, the appeals are dismissed, thereby confirming the order

WEB COPY
https://ncservices.ecourts.gov.in/ncservices/

of the learned single Judge.

12. In W.A.M.P.No.1963 of 2003, one Vandana Venkatachalam, had prayed for impleading herself as fourth respondent in the writ appeal. She had stated that in view of the decree obtained for maintenance and the charge given over the property, they impleaded themselves in the course of the writ proceedings. The deponent had stated that in spite of favourable orders, they had not received the amount payable under the decree. The deponent's mother, who was also the beneficiary therein, died on 4.12.2002 without receiving the money. The deponent states that she is pursuing her studies with great difficulty. In the circumstances, she has prayed for impleading herself as respondent No.4 and also prayed for vacating the order of stay granted in the writ appeal. In view of the dismissal of the writ appeal, the order passed earlier in the writ proceedings directing payment of the amount to this petitioner stands affirmed. The respondents are hereby directed to release the fund payable to the fourth respondent at the earliest without any delay.

In the result, the writ appeal is dismissed. No costs. Connected W.A.M.P. No. 6135 of 2002 is closed. W.A.M.P.No.1963 of 2003 is hereby ordered.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar

ksv

To:

1. The Appropriate Authority
(Income-tax Department) First Floor
108, Mahathma Gandhi Road
Chennai-600 034.

2. The Secretary
Ministry of Finance
Union of India
New Delhi.

+2 C.C. to Mr.A.K.Lakshminarayanan, Advocate S.R.105908
+1 C.C. to Mrs. Pushya sitaraman, Advocate S.R.No.15768
+1 C.C. to M/s.Chitra Sampath, Advocate SR.15785

NR(25.4.2007)

W.A.No.3661 of 2002
Dated: 13.03.2007

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/